



# Commonwealth of Massachusetts

## DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

### **MGL Chapter 40B Guidelines for Planned Production Regulation** **760 CMR 31.07(1)(i)**

#### **1. Introduction**

These guidelines describe the process and requirements for local development of an affordable housing plan, submission of the plan for state approval and certification of municipal compliance with the plan in accordance with the regulations.

In accordance with regulations promulgated by the Department of Housing and Community Development (DHCD), cities and towns may:

- Develop and adopt an affordable housing plan for approval by the Department,
- Request certification of compliance with the plan by demonstrating production of an increase of at least 3/4 of one percent of total year round housing units in low and moderate income housing units that are eligible for inclusion on the Subsidized Housing Inventory, and
- Through local Zoning Board of Appeals action, deny a comprehensive permit application during the period of certified compliance.

A community certified to be in compliance with an affordable housing plan may deny comprehensive permit applications for a one year period following certification that it has produced  $\frac{3}{4}$  of one percent of total housing units, or two years if it has produced 1.5% of total housing units.

#### **2. Affordable Housing Plan**

To be approved by the Department, a community must adopt an affordable housing plan consistent with the regulations and these guidelines.

- Overall, the plan must establish a context for municipal action with regard to housing based on a comprehensive housing needs analysis that examines current community demographics, existing housing stock characteristics, development conditions and constraints, municipal ability to mitigate those constraints and an evaluation of municipal infrastructure.
- The plan must address a mix of housing consistent with identified needs and feasible within the housing market, specific strategies by which the community will achieve its housing goals and descriptions of the use restrictions the community will use to ensure affordability.
- The plan must also address at least one or more of the following actions:
  - Identification of geographic areas in which land use regulations will be modified to accomplish affordable housing production goals,

- Identification of specific sites on which Comprehensive Permit applications are to be encouraged,
  - Preferable characteristics of residential development such as infill development, clustered uses, and compact development, or
  - Municipally owned parcels for which development proposals will be sought.
- The plan must address the long term-use restrictions that will be placed on the affordable housing units.

A community's plan may also address other local actions to accomplish its housing goals.

Many communities have adopted plans that contain the required elements of an affordable housing plan or a series of planning documents that contain some of the requirements. Master plans, Executive Order 418 community development plans or housing certification strategies, Consolidated Plans or Affordable Housing Strategies produced within the past 5 years may contain some or all of the necessary information to achieve certification under this regulation.

Whether a newly produced plan, a previously produced plan, or a compilation of elements from previously developed plans, materials submitted to the Department for certification as an **affordable housing plan must be accompanied by a summary document** in the following format that paraphrases the plan elements, identifies the specific location of any materials cited within the planning documents and specifies the reasons why the community believes the submitted materials satisfy the Department's approval requirements.

### **Summary Submission – Planned Production Regulation – Affordable Housing Plan**

#### Section 1. Comprehensive Housing Needs Assessment (See 760 CMR 31.07(1)(i)(1))

#### Section 2. Affordable Housing Goals (See 760 CMR 31.07(1)(i)(2)(a))

- Including the mix of housing sought by the community
- Including timeframe/schedules for production of units

#### Section 3. Affordable Housing Strategy (See 760 CMR 31.07(1)(i)(2)(b) and 760 CMR 31.07(1)(i)(3))

- May include zoning areas which are proposed to be modified to accommodate residential development
- May include identification of specific sites for which comprehensive permit applications would be encouraged
- May include preferred characteristics of development
- May include identification of municipally owned parcels for which housing development proposals would be sought

#### Section 4. Description of Use Restrictions (See 760 CMR 31.07(1)(i)(2)(c))

### **3. Approval of Affordable Housing Plan**

Communities that develop a plan in accordance with the regulations and this guidance may submit the plan to the Department for approval. The plan must be submitted by the municipality's chief elected official (in a city, the mayor; in a town, the selectmen) attesting that the submission constitutes the

municipality's affordable housing plan and requesting plan approval.<sup>1</sup> Within 90 days of the submission of a complete affordable housing plan, the Department will approve or disapprove the plan.

If a municipality submits a plan the Department finds incomplete, DHCD will notify the community of the materials that are missing. DHCD's 90-day approval process will not begin until a complete plan is received. If the Department disapproves a plan, it will notify the community as to the reasons for disapproval.

Communities may revise and resubmit a plan in response to disapproval. Communities may also amend a plan at any time. Resubmissions and amendments must be accompanied by an updated submission by the chief elected official, as above.

Communities should submit the plan to:

Jane Wallis Gumble, Director  
MA Department of Housing and Community Development  
Office of Sustainable Development  
1 Congress Street  
Boston, MA 02114  
[MaryJane.Gandolfo@ocd.state.ma.us](mailto:MaryJane.Gandolfo@ocd.state.ma.us)

The Department would prefer an electronic copy of the plan for its review, submitted via e-mail attachment or on disc.

#### **4. Certification of Compliance with Affordable Housing Plans**

Communities with an approved affordable housing plan may request DHCD certification of compliance with their plan by submitting evidence that housing units have been produced in the calendar year for which certification is requested that are eligible to be counted on the Subsidized Housing Inventory and total at least  $\frac{3}{4}$  of one percent of the total housing units in the community. This can be demonstrated by submitting a description of the units including their location, and copies of final comprehensive permits and/or building permits for the required units.<sup>2</sup>

The Department will evaluate whether the housing units identified have been produced in accordance with the approved affordable housing plan for the community. If the units have been produced in accordance with the plan and the number of units is at least  $\frac{3}{4}$  of one percent of the community's total year round housing units, DHCD will certify that the community is in compliance with its plan. DHCD will determine whether a community is in compliance with its plan within 30 days of receiving a community request for certification.

For the initial certification period, DHCD will also accept any qualifying housing units (eligible to be counted on the Subsidized Housing Inventory)<sup>3</sup> produced between August 1, 2002 and December 31, 2002 regardless of when the certification is requested. In subsequent certifications, compliance will be

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<sup>1</sup> The Chief Executive Officer may submit on behalf of the municipality, if so authorized by local charter.

<sup>2</sup> The form used for including units on the Subsidized Housing Inventory can be used. See Attachment.

<sup>3</sup> Regulations allow housing units to be added to the Subsidized Housing Inventory when a comprehensive permit becomes final. Units authorized under comprehensive permits shall be credited toward the annual increase when the comprehensive permit becomes final. However, units authorized by a comprehensive permit are removed from the Subsidized Housing Inventory if a building permit has not been issued within one year from the date the comprehensive permit becomes final.

determined based on production of qualifying housing units within the calendar year for which certification is requested.

Communities should submit certification requests to:

MA Department of Housing and Community Development  
Office of Sustainable Development  
1 Congress Street  
Boston, MA 02114  
[MaryJane.Gandolfo@ocd.state.ma.us](mailto:MaryJane.Gandolfo@ocd.state.ma.us)

## **Sample Chronology**

*March 15, 2003*

Step 1: Completion and submittal of affordable housing plan to DHCD.

Community X completes an affordable housing plan and submits it to DHCD for approval.

*Prior to June 15, 2003 (within 90 days)*

Step 2: DHCD review period.

DHCD determines that the plan is complete, reviews it and approves Community X's housing plan and notifies the community.

*November 8, 2003*

Step 3: Municipal request for certification of compliance with plan for first year.

Community X requests DHCD certification of compliance with their plan based on permitting and/or production of units within calendar year 2003, that are

- Eligible to be counted on the Subsidized Housing Inventory
- In accordance with the approved plan, and
- Total more than  $\frac{3}{4}$  of one percent of their total housing units.

*Prior to December 8, 2003 (within 30 days)*

Step 4: DHCD certification review period for first year.

DHCD certifies that Community X is in compliance with its approved plan based on production of housing within calendar year 2003 and from August 1, 2002 through December 31, 2002, retroactive to November 8, 2003 and effective until November 7, 2004.

*January 2, 2004*

The Zoning Board of Appeals in Community X denies an applicant for a comprehensive permit based upon their certification. If appealed, the HAC will uphold the denial.

*May 11, and June 6, 2004*

The ZBA in Community X approves two comprehensive permits for projects with units that are eligible for inclusion on the inventory and that total at least  $\frac{3}{4}$  of one percent of their total housing units.

*November 8, 2004*

Step 5: Municipal request for certification of compliance with plan for second year. Community X requests DHCD certification of compliance with their plan based on permitting and/or production of units within calendar year 2004 that are

- Eligible to be counted on the Subsidized Housing Inventory
- In accordance with the approved plan, and
- Total more than  $\frac{3}{4}$  of one percent of their total housing units.

*Prior to December 8, 2004 (within 30 days)*

Step 6: DHCD certification review for second year.

DHCD certifies that Community X is in compliance with its approved plan based on production of housing within calendar year 2004, retroactive to November 8, 2004 and effective until November 7, 2005.

## **5. Certified Communities' Authority**

A decision by a Zoning Board of Appeals to deny a comprehensive permit application shall be "consistent with local needs" and the denial will be upheld by the Housing Appeals Committee in a community that has been certified as being in compliance with its affordable housing plan at the time of the denial.

This authority shall continue for as long as a community has certification based on the production of low and moderate-income housing units of at least  $\frac{3}{4}$  of one percent of the total housing units in the community. In a community certified to have produced 1.5 percent, the Board's authority to deny comprehensive permits will be valid for two years.

Certification by the Department takes effect immediately, and may affect pending and future applications to the Board.

### Attachments:

Guide to Adding Units/New Units Form

Subsidized Housing Inventory

Spreadsheet illustrating .75% and 1.5% number of units per community